

Department of the Navy, DoD

§719.155

the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(d) *Contents of applications.* All applications for relief shall contain:

- (1) Full name of the applicant;
- (2) Social Security number and branch of service, if any;
- (3) Present grade if on active duty or retired, or “civilian” or “deceased” as applicable;
- (4) Address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);
- (8) Command title of the officer exercising review authority in accordance with 10 U.S.C. 864 over the applicant at the time of trial, if applicable;
- (9) Type of court-martial which convicted the applicant, and sentence adjudged;
- (10) General grounds for relief which must be one or more of the following:
 - (i) Newly discovered evidence;
 - (ii) Fraud on the court;
 - (iii) Lack of jurisdiction over the accused or the offense;
 - (iv) Error prejudicial to the substantial rights of the accused;
 - (v) Appropriateness of the sentence;
- (11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant’s contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);
- (12) Any other matter which the applicant desires to submit;
- (13) Relief requested; and
- (14) Facts and circumstances to establish “good cause” for a failure to file the application within the time limits prescribed in paragraph (b) of this section, if applicable; and
- (15) If the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application. The applicant’s copy of the record of trial will *not* be forwarded with the application for relief, unless specifically

requested by the Judge Advocate General.

(e) *Signatures on applications.* Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant’s spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

[50 FR 23804, June 6, 1985]

§§ 719.145–719.150 [Reserved]

§719.151 **Furnishing of advice and counsel to accused placed in pre-trial confinement.**

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee’s right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

[39 FR 18437, May 28, 1974]

§719.155 **Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.**

(a) *Statutory provisions.* 10 U.S.C. 874(b) provides that the “Secretary